

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

101 WEST LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-0782
(410) 962-2698 FAX

November 3, 2005

Memo To Counsel Re: MDL-15863, Alger Subtrack;
Demayo v. Alger Small Portfolio, et al.,
Civil No. JFM-04-0876

Dear Counsel:

The purpose of this memorandum is to rule upon the motions to dismiss the **consolidated amended class action** complaint in the *Alger* subtrack.

Motion of the Alger defendants other than Independent Trustees. Granted in part and denied in part for the same reasons, and in the same respects, stated in the investor class opinion and order I issued in the *Janus* subtrack in connection with the claims against the Janus defendants. The ruling regarding the section 36(b) claim is subject to later determination as to whether the claim may be brought in the class action or only in the derivative fund action.¹

Motion of the Independent Trustees. Granted as to all claims that are being dismissed against the other Alger defendants; ruling deferred as to claims that are not being dismissed as to the other Alger defendants. I will rule upon the particularized defenses these defendants assert at a later date when my schedule permits.

Motion of the Canary Defendants. Ruling deferred because action is stayed as to these defendants.

Motions of Aurum Capital Mgmt. Corp.; Saginor Group; Peconic Partners, LLC; Veras Investment Partners, LLC; and Wilshire Associates. Granted in part and denied in part for the same reasons, and to the same respects, stated in the investor class opinion and order I issued in the *Janus* subtrack in connection with the claims against the "trader defendants."

Motions of Bank of America and Bear, Stearns Defendants. Granted in part and denied in part for the same reasons, and in the same respects, stated in the investor class opinion and order I issued in the *Janus* subtrack in connection with the claims against the Bank of America and Bear, Stearns defendants.

¹Some of the Fund defendants may be trusts or other entities whose sole purpose is to hold assets for shareholders of a fund. If so, all of the claims against those defendants should be dismissed, as indicated in the letter regarding "general instructions" I am sending out today.

Motions of Brokers and Clearing Platform Defendants other than Bank of America and Bear, Stearns Defendants. Granted, without leave to amend, for the same reasons stated in the investor class opinion and order I issued in the *Janus* subtrack in connection with the claims against the broker dealer defendants other than Bear, Stearns and Bank of America.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge